

Criminal Revision No. 148/2001
(Old No. 794/1983)

Ram Singh S.o Vijai Singh
R/o village Deoli Patti Khas
District Almora

..... Revisionist.

Vs.

State of U.P.

..... Respondent.

Hon'ble Irshad Hussain, J.

This is a criminal revision against the judgment and order dated 4.2.2003 passed by Sessions Judge, Nainital whereby the conviction and sentence against the revisionist under section 379 I.P.C. as recorded by the C.J.M., Nainital per judgment and order dated 24.3.1982 was up-held.

(2). Heard Sri C.K. Sharma learned counsels for the revisionist and Sri Gajendra Singh Sandhu learned A.G.A. and perused the record.

(3). From the evidence it is evidence that a bag containing ornaments and other valuable items belonging to Vinay Chandra (P.W.1) was stolen from K.M.O.U. bus stand, Nainital on 6-9-1981 at about 4 p.m. and the bag containing the said items was recovered from the possession of the revisionist the same day at about 10 p.m. when he un-boarded the passenger but at Lodhia Chungi Almora. The arrest was made by S.I. T.D. Pant and other police personnel in the presence of public witnesses who were also found travelling by the same bus.

(4). The factum of the recovery was proved by the independent witnesses Shailendra Kumar Shah (P.W.4) and Dinesh Chandra Singh (P.W. 5). Learned counsel for the revisionist submitted that there are material contradictions in their evidence in as much as they gave out under section 161 of the Code of Criminal Procedure that they saw the occurrence while they happened to reach near Lodhia Chungi at the time of arrest of the revisionist. Both the witnesses were confronted with their earlier statements under section 161 of the Code of Criminal Procedure in part as is evident from their cross-examination which does not indicate that both of them were not in fact travelling in the same bus in which the revisionist travelled alone upto Almora and un-boarded the bus at that point. The

consistency of their evidence was also affirmed from the evidence of P.W.7 who categorically stated that both these witnesses also travelled by the same bus and they got down at Lodhia Chungi where the arrest was conducted. There is nothing material in their cross-examination which may create any suspicion in their evidence or have any adverse effect on their trustworthiness.

(5) The recovered items were put to test identification and both the complainant Vinay Chandra (P.W.1) and his wife Smt. Asha Chandra (P.W.2) have correctly identified the recovered ornaments and articles which were described in the written F.I.R., Ex.Ka.1 itself. Link evidence was also adduced to show that these items were not shown to these witnesses after recovery and till the same were put to test identification. No infirmity in the identification proceedings could be pointed out by the learned counsel for the revisionist.

(6). It was submitted that the F.I.R. was probably ante-time because 43 items could not have been shown so detailed in the F.I.R. soon after the occurrence and this indicates that later on the F.I.R. was got prepared and filed at the police station. Nothing in the evidence of the complainant could be pointed out as may show that the F.I.R., Ex.Ka.1 was prepared later on and was filed at the police station. Considering the evidence on record the learned Magistrate as well as the learned Sessions Judge have properly appreciated the evidence of the prosecution and have correctly drawn the inference that revisionist was found in possession of the stolen property and the theft was committed by him. There being no perversity in the appreciation of the evidence the conviction of the revisionist under section 379 I.P.C. has to be upheld.

(7). On the point of sentence the learned counsel for the revisionist submitted that the revisionist was a government servant and after his conviction he was terminated. It is also submitted that he remained for quite some time under detention after his arrest. The occurrence took place more than 20 years ago and pointing out to this the learned counsel submitted that the ends of justice will be satisfied if the revisionist is sentenced to the period already undergone together with reasonable fine.

(8). Considering that the revisionist has also lost his job it will be just and proper to modify the sentence awarded against the revisionist. In the face of the facts of the case the sentence is modified to the period already undergone by the revisionist together with fine of Rs. 1500/-(one thousand & five hundreds). The fine shall be deposited within a period of one month. Let the record be sent back to C.J.M., Nainital who shall submit compliance report about the deposit of fine within two months.

(Irshad Hussain, J.)

Dated: 22-9-03

ISB